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FILED

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Division of Consumer Affairs

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

Docket No.: 05-012

PETER C. HARVEY, Attorney General of
the State of New Jersey,

Petitioner,

v.

Edward A. Nicholas, individually and d/b/a
Edward A. Nicholas Construction, LLC,
a/k/a Nicholas Construction,

Respondents.

Administrative Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at
124 Halsey Street, Fifth Floor, Newark, New Jersey, by way of this Complaint states:

PARTIES AND JURISDICTION

1. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey
("Attorney General") is charged with the responsibility of enforcing the laws of the State of New
Jersey (the "State"), including the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

(the“CFA”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“Regulations”).

2. By this action, the Attorney General (“Petitioner”) seeks injunctive and other relief for violations of the CFA and the regulations promulgated thereunder. Petitioner brings this action pursuant to the authority under the CFA, specifically N.J.S.A. 56:8-3.1, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

3. Upon information and belief, Edward A. Nicholas (“Nicholas”) is the founder, owner, president, director, agent and/or employee of Edward A. Nicholas Construction, LLC. Upon information and belief, Nicholas’ last known and/or current home address is 39 Richards Drive, Pittsgrove, New Jersey 08318.

4. Upon information and belief, Edward A. Nicholas Construction, LLC, (“Nicholas Construction”) is a limited liability company incorporated under the laws of New Jersey on October 21, 2003. Upon information and belief, Nicholas Construction maintains a principal business address of 39 Richards Drive, Pittsgrove, New Jersey 08318 and a postal address of P.O. Box 486 Newfield, New Jersey 08344.

5. Nicholas and Nicholas Construction are collectively referred to as “Respondents.”

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

6. Upon information and belief, at least since October 2003, Respondents have engaged in the business of performing home improvements in the State and elsewhere including, but not limited to, home remodeling, roofing, siding, paving, electrical work, landscaping and stone and brick work to the exterior of residential homes and/or buildings.

7. Upon information and belief, at all relevant times, Respondents advertised and transacted business as "Edward A. Nicholas Construction, LLC" or "Nicholas Construction."

8. Upon information and belief, on October 31, 2003, Respondents filed a Voluntary Petition for Bankruptcy under Chapter 7 of the Bankruptcy Code, United States Bankruptcy Court, District of New Jersey (Camden), Case No. 03-45755-GMB. Upon information and belief, on April 12, 2004, Respondents were discharged from the bankruptcy.

9. Petitioner's claims against Respondents are not stayed by virtue of their bankruptcy filings, pursuant to 11 U.S.C. 362(b)(4) which provides an exception from the automatic stay for an action or proceeding by a governmental unit to enforce its police or regulatory power.

CONSUMER COMPLAINTS

Consumer Downing:

10. At least as of April 3, 2002, Respondents have used a pre-printed proposal form ("Proposal") which is completed and signed by the consumer and Respondents prior to entering into a home improvement contract.

11. At least as of April 3, 2002, Respondents have provided on their Proposal that "All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practice."

12. Upon information and belief, on or about April 3, 2002, Mr. and Mrs. Robert Downing ("Consumer Downing") executed the Proposal and entered into a home improvement contract with Respondents in which Respondents agreed to construct a new addition to the Consumer Downing's home and to add vinyl siding for a total cost of \$10,000.00.

13. Upon information and belief, the Proposal did not provide any dates for when the home improvement contract would begin or when the work would be completed.

14. Upon information and belief, on or about April 3, 2002, before Respondents began construction, Consumer Downing paid Respondents one-half of the contract price or \$5,000.00 pursuant to the terms of the contract.

15. Upon information and belief, Respondents did not begin construction on Consumer Downing's home until four (4) months after the execution of the contract. Upon information and belief, two (2) weeks after construction began and pursuant to the terms of the contract, Respondents requested and were paid the second payment installment or \$3,500.00.

16. Upon information and belief, Respondents failed to complete the work as prescribed under the contract.

Consumer Waller

17. At least as of August 9, 2002, Respondents would provide consumers who retain their services with the Proposal and/or a document titled "Specifications" and/or "Agreement Between Builder & Owner" (hereinafter referred to as "Agreement") which would set forth the terms of their home improvement contract.

18. Upon information and belief, on or about August 9, 2002, Mr. and Mrs. Michael L. Waller ("Consumer Waller") executed the Agreement and entered into an agreement with Respondents wherein Respondents were required to construct a new bedroom, bathroom, roof and install a new heating and cooling system for a total cost of \$73,000.00.

19. Upon information and belief, Consumer Waller informed Respondents that the

reason for the additions was because Consumer Waller had just been granted custody of her late sister and brother-in-law's three children.

20. Upon information and belief, on August 12, 2002, at the signing of the contract, Consumer Waller paid Respondents one-third of the contract price or \$25,000.00. In September and November 2002, Consumer Waller paid Respondents an additional \$25,000.00, respectively.

21. Upon information and belief, the Agreement did not provide any dates for when the home improvement contract would begin or when the work would be completed.

22. Upon information and belief, Respondents did not began construction on Consumer Waller's home until three (3) months after the execution of the contract, at which time Respondents ripped off the roof of the home and began construction on the framing. Thereafter, Respondents did not return to Consumer Waller's home until January 2004.

23. Upon information and belief, after Respondents refused to pay the subcontractors for services rendered, the subcontractors began to demand payment from Consumer Waller.

24. Upon information and belief, Respondents have failed to respond to any of Consumer Waller's telephone calls and/or written correspondence or responded with failed promises to repair.

25. Upon information and belief, Respondents' failed to complete the work prescribed under the Agreement.

Consumer Stiles

26. Upon information and belief, on or about January 31, 2003, Mr. and Mrs. James Stiles ("Consumer Stiles") executed a Proposal and an Agreement with Respondents wherein Respondents agreed to construct an addition and renovate Consumer Stiles' home for a total price of \$72,000.00.

27. Upon information and belief, on March 11, 2003, Consumer Stiles paid Respondents

one-third of the contract price or \$25,000.00.

28. Upon information and belief, Respondents verbally promised Consumer Stiles that the construction and renovations would be completed within four (4) months.

29. Upon information and belief, on March 30, 2003 and March 31, 2003, Consumer Stiles paid Respondents an additional \$7,500.00 and \$17,500.00, respectively, pursuant to the terms of the Agreement.

30. Upon information and belief, on or about June 12, 2003, Nicholas informed Consumer Stiles that Respondents wanted to pour the concrete for the garage, finish the roof on both the home and the garage, and begin the plumbing and electrical renovations, but that Respondents only had \$2,000.00. As a result, Consumer Stiles paid Respondents another \$13,400.00.

31. Upon information and belief, Respondents' failed to complete the work as required under the Agreement. As a result of the unfinished roof, Consumer Stiles' home was exposed to the elements and sustained permanent property damage.

32. Upon information and belief, Respondents have failed to respond to Consumer Stiles' telephone calls and/or written correspondence or responded with failed promises.

COUNT I

VIOLATIONS OF THE CFA BY RESPONDENTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

33. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 31 as though fully set forth herein.

34. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise,

misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of any merchandise....

35. In the operation of their home improvement business, Respondents have engaged in unconscionable commercial practices including, but not limited to:

- a. Failing to begin or complete the work specified in home improvement contracts;
- b. Failing to provide consumers with refunds for home improvement work that Respondents never commenced and/or completed;
- c. Performing work in a faulty manner;
- d. Unilaterally increasing the contract price after the commencement of construction;
- e. Accepting payment for work that was neither started and/or completed;
- f. Failing to respond to consumers' telephone calls and/or written correspondence in a timely manner or at all;
- g. Failing to repair consumers' roof in a timely manner so as to leave consumers' home unprotected; and
- h. Failing to pay subcontractors resulting in their refusal to complete repairs and/or threats of liens imposed against consumers' property.

36. Each unconscionable commercial practice by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY RESPONDENTS (FALSE PROMISES AND MISREPRESENTATIONS)

37. Petitioner repeats and realleges the allegations contained paragraphs 1 through 35 above as though fully set forth herein.

38. The conduct of Respondents in violation of the CFA includes, but is not limited to, the following false promises and/or misrepresentations:

- a. Misrepresenting in home improvement contracts the start and completion dates for the work specified therein;
- b. Promising to return to consumers' home to complete home improvement work and then failing to do so;
- c. Misrepresenting to consumers that subcontractors had been paid when in fact they had not;
- d. Misrepresenting that repairs would be completed within a certain time frame; and
- e. Misrepresenting to consumers that certain aspects or phases of repairs had passed local inspection when they had not.

39. Each false promise and/or misrepresentation by Respondents constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE CFA BY RESPONDENTS (KNOWING OMISSION OF MATERIAL FACTS)

40. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 38 above as though fully set forth herein.

41. In the operation of their home improvement business, Respondents have engaged in the knowing omission of material facts including, but not limited to:

- a. Failing to include in their home improvement contracts the date or time period within which work is to commence; and
- b. Failing to include in home improvement contracts the date or time period within which work will be completed.

42. Each knowing omission of material fact by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENTS

43. Plaintiffs repeat and realleges the allegations contained in paragraphs 1 through 41 above as if more fully set forth herein.

44. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

45. Respondents are "seller[s]" within the definition of N.J.A.C. 13:45A-16.1.

46. At all relevant times, Respondents entered into "home improvement contracts" within the definition of N.J.A.C. 13:45A-16.1.

47. The Home Improvement Regulations provide, in pertinent part:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

7. Performance:

....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable

casualties, or any other cause beyond seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7)(ii), (iii).]

48. Additionally, the Home Improvement Regulations include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

- 12. Home improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

- i. The legal name and business address of seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

....

- iv. The dates or time period on or within the work is to begin and be completed by seller;

....

[N.J.A.C. 13:45A-16.2(a)(12)(i), (iv).]

49. Respondents violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to commence the work by the date or within the time period specified in the home improvement contract;
- b. Failing to complete the work by the date or within the time period specified in the home improvement contract;

- c. Failing to provide consumers with timely written notice of a delay in the commencement or completion of home improvement work;
- d. Failing to obtain consumers' written consent to any changes in the commencement and/or completion dates specified in the home improvement contract;
- e. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence; and
- f. Failing to include in home improvement contracts the dates or time periods within which the work is to be completed.

50. Respondents' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Respondents:

- (a) Finding that the acts and omissions of Respondents constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Respondents and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Respondents, jointly and severally, to restore any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (d) Assessing the maximum statutory civil penalties against Respondents, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of cost and fees, including attorneys' fees, against Respondents, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____

Jeremy S. Crawford
Deputy Attorney General

Dated: October 31, 2005
Newark, New Jersey